IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.3191 of 2006

Date of Decision : 15.10.2007

Gobinder Ram @ Gobind Ram and others .....Appellants

versus

Sinder Kaur and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present : Mr.R.K.Battas, Advocate for the appellants.

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JUDGMENT

HEMANT GUPTA, J.

The defendants are in second appeal aggrieved against the judgment and decree passed by the learned First Appellate Court whereby plaintiffs' suit for declaration claiming the estate of the deceased Telu Ram, was decreed being daughters of his pre-deceased son Chanan Ram.

The dispute in the suit is regarding estate of Telu Ram who has 5 sons including Chanan Ram and 2 daughters. Chanan Ram pre-deceased son of Telu Ram died on 20.9.1988. After the death of Telu Ram on 15.6.1991, the daughters of his pre-deceased son Chanan Ram filed a suit for declaration being his legal heirs. The learned trial Court dismissed the suit, but the said findings have been reversed by the learned First Appellate Court holding that the plaintiffs are entitled to 1/6th share in the estate of deceased Telu Ram having found that one of the sons of Telu Ram namely Gobind Ram has been adopted by Bhagtu Ram, brother of Telu Ram.

It is also pleaded by the defendants that Telu Ram has executed a Will dated 22.12.1988 in favour of defendant Nos.1 to 4 and, thus, the plaintiffs are not entitled to share in the estate of Telu Ram. It has been

found that said Will has been found to be surrounded by suspicious circumstances in a Civil Suit filed by Sat Pal, defendant No.5 against defendant Nos.1 to 4, vide judgment dated 7.1.2000, Exhibit P-11. The said finding in respect of Will also stands affirmed by the learned First Appellate Court. On the basis of such finding, it was held that the plaintiffs are entitled to 1/6th share of Telu Ram by virtue of natural succession.

The defendants have challenged such judgment and decree primarily on the ground that the suit is barred by limitation and it is the stand of the plaintiffs that Chanan Ram was excluded from the estate of Telu Ram during the life time of his father and, therefore, the suit could not have been filed by his daughters after the death of Telu Ram.

Having heard learned counsel for the appellant at some length, I do not find any illegality or irregularity in the findings recorded by the learned First Appellate Court. The plaintiffs have filed a suit for declaration claiming joint possession on the basis of title. Such suit for declaration could be filed when any cloud over their title is raised. The succession of Telu Ram opened on 15.6.1991 and, therefore, the suit on the basis of title cannot be said to be beyond the period of limitation.

The argument that Chanan Ram was excluded from the estate of Telu Ram is wholly inconsequential. The exclusion of Chanan Ram could be only in one of the known legal methods. The execution of a valid Will is one of the methods to exclude Chanan Ram or his children from inheritance. However, the Will relied upon by the defendants has been disbelieved in earlier litigation interse the defendants. Therefore, the said Will cannot form basis to negate the claim of the plaintiffs. The plaintiffs being the daughters of the pre-deceased son of Telu Ram, are entitled to estate of Telu Ram by

virtue of natural succession to the extent of share falling to the share of their father.

Under Issue No.5, relating to adoption of Gobind Ram by Bhagtu Ram, the learned trial Court held that vide Writing dated 16.3.1972, Exhibit D-1, Gobind Ram was adopted by Bhagtu Ram. Such adoption is proved by the testimony of D-2 Ram Singh. DW-3 Joginder Singh has proved handwriting of scribe Manohar Lal. Such finding has been affirmed in appeal as well.

Thus, I do not find any illegality or irregularity in the decree passed by the learned First Appellate Court holding that the plaintiffs are entitled to 1/6th share in the estate of Telu Ram, which may raise any substantial question of law for consideration of this Court in second appeal.

The appeal stands dismissed.

15-10-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**